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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.487 OF 2007

Adil Wasif Khan Applicant
versus
Mrs.Mary Sanjaw Rebel & others Respondents

Mr.S.M.Oka i/by Miss Nayana V. Thatte for applicant.
Mr.B.R.Zaveri for respondents 4 and 5.
Mr.I.R.Kulkarni for respondents 1 to 3.

CORAM : A.S.OKA, J.
DATE : 29th June 2007

PC :

1. Heard advocates for the parties. The challenge in this Appeal from order is to the judgment and order dated 26th April 2007 passed by the Trial Court by which the application made by the appellant for temporary injunction has been rejected.

2. The appellant filed a suit for specific performance of agreement dated 27th May 1994 allegedly executed by respondent nos.1 to 3 herein in his favour. According to the case made out by the appellant, under the said agreement, the first to third respondents accepted the consideration and the appellant was put in

possession of the suit property.

3. The learned counsel for the appellant has invited my attention to the judgment and order dated 25th May 2005 passed by the District Court in an appeal preferred by the appellant and two others for challenging the order dated 30th November 2004 passed by the Trial Court on an application for injunction in Regular Civil Suit No.743 of 2003 filed by respondent nos.4 and 5 in this appeal. He pointed out that the blanket order of injunction passed by the Trial Court in favour of respondent nos.4 and 5 was modified by the Appellate Court and respondent nos.4 and 5 and the appellant and other parties to the said suit were directed to preserve status-quo in respect of the suit property and none of the parties were permitted to carry out any work on the said properties. He stated that the present suit for specific performance was filed as the respondents in this appeal entered into a settlement and an application was made by fourth and fifth respondents in Regular Civil Suit No.743 of 2003 for withdrawal of the said suit. He submitted that in the light of the order passed by the District Court on 25th May 2005, the learned Trial Judge could not have rejected

the application for temporary injunction.

4. I have considered the submissions. It must be noted that the appeal which is decided by the District Court on 25th May 2005 did not arise out of the suit filed by the applicant. The suit was filed by fourth and fifth respondents. It will be necessary to refer to the written statement filed by first to third respondents herein in the said suit. The present appellant was one of the defendants in the said suit. In the said suit, a specific stand was taken by the first to third respondents that at no point of time any amount of consideration was received by them from the appellant or other defendants in the said suit. In fact, in the said written statement the first to third respondents contended that the fourth respondent herein was in possession of the first and second properties subject matter of that suit. There is a specific denial by the first to third defendants in the written statement to the effect that they had never agreed to sell the suit property to the appellant and other defendants to the suit.

5. It must be noted here that the present suit in which injunction was sought was filed in

February 2006. The alleged vendors of the appellant by filing written statement in the earlier suit on 1st October 2004 have clearly denied that they have received any consideration from the appellant and have clearly denied to have executed the transaction with the appellant. Thus, the suit filed by the appellant suffers from delay and laches. A perusal of the order dated 25th May 2005 passed by the District Court on which reliance is placed by the appellant shows that there is a specific observation made by the learned District Judge that the appellant and other two defendants have not shown as to how consideration was paid by them.

6. The grant of temporary injunction is always discretionary and equitable relief. Though there was a specific denial of the suit transaction on the part of first to third respondents, in the written statement filed in the earlier suit in October 2004 to which the appellant was a party, no attempt was made by the appellant to file a suit for specific performance. It is contended that the cause of action for the appellant to file a suit arose when an attempt made by the fourth respondent who is the plaintiff in Regular Civil Suit No.743 of 2003 to withdraw the said

suit. However, that cannot be a cause of action for filing a suit for specific performance. The cause of action prima facie arose in October 2004. There is a clear refusal on the part of first to third respondents to perform their part of the alleged agreement. This is not a case where in the earlier suit filed by the fourth respondent, respondent nos.1 to 3 supported the case of the appellant. In my view, discretionary and equitable relief was rightly denied to the appellant in view of delay and laches in filing the suit.

7. There is no reason to interfere with the discretionary order of the Trial Court. There is no merit in the appeal and the same is dismissed with no order as to costs. All observations made in this order are tentative observations made for considering the prayer made at Exhibit-5 and the Trial Court will proceed to decide the suit without being influenced by the observations made in this order.

8. Parties and all concerned to act on an ordinary copy of this order duly authenticated by Registry of this Court. Hearing of the suit is expedited and the same shall be preferably

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decided on or before 31st March 2008.

(A.S.OKA, J.)